Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BRK:TL-N-1764-01
HNAdams

date: March 19, 2001

to: Karen Verner, Manager, SBSE Division Group 1042
Attn: Revenue Agent Larry Kiss

from: Associate Area Counsel (Financial Services & Healthcare)
CC:LM:FSH:BRK

subject: [redacted]

U.I.L. Nos. 6229.00-00, 6501.00-00

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Reference is made to your March 16, 2001 request for advice regarding the above taxpayer.

ISSUE

When does the statute of limitations expire on assessing deficiencies resulting from adjustments to the [redacted] U.S. income tax return of [redacted] ("[redacted]")?

CONCLUSION

Deficiencies resulting from adjustments to the taxable income reported by [redacted] for [redacted] must be assessed before the expiration of the shareholder-level assessment periods. No corporate level period applies.

FACTS

The facts as were understand them are as follows:

[redacted] was an S corporation during its year ended [redacted] and filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for that year. The signatures of the return preparer and corporate controller on that return are dated "[redacted]." The return bears a stamp indicating that it was received by mail at the Brookhaven Service Center on [redacted]. However, the BMF MCC Transcript for the return reflects a return received date of [redacted] and an ASED (assessment statute expiration date) of [redacted].

[redacted] had a number of shareholders during its year ended [redacted]. We have not been provided with information regarding when the shareholders filed their returns and understand that the examination division is in the process of determining that information.

DISCUSSION

The General 3-Year Statute of Limitations

Code section 6501, as applicable to years beginning before August 6, 1997, provides as follows:

> (a) General Rule.--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not the return was filed on or after the date prescribed) * * *.

Under this provision, the time within which an assessment must be made is three years from the later of the due date for filing or the actual date of filing of the return. See I.R.C. § 6501(b)(1).

TEFRA Rules

Code section 6229 - Under TEFRA, Code section 6229 supplies a minimum assessment period for tax attributable to adjustments to partnership items by providing generally that the period for assessing tax attributable to a partnership item shall not expire before three years after the later of the date the partnership return for the year was filed or due. I.R.C. § 6501(n)(3) (referring to Code section 6229 for extension of period in the case of partnership items).

Applicability of Section 6229 to S Corporations - Former Code section 6244 made section 6229 applicable to assessments of tax attributable to subchapter S items for taxable years beginning before 1997. I.R.C. § 6244(1)(A) (as applicable to years beginning before January 1, 1997). Code section 6244 does not apply with respect to [redacted]'s [redacted] year because it and the other provisions of Subchapter D that provided for the corporate level determination of the tax treatment of S corporation items were repealed by section 1307 of the Small Business Job Protection Act of 1996. See PLR 199905040 at n.2 (Sept. 25, 1998). That repeal was effective for tax years beginning after December 31, 1996. Id.

Statute Applicable to Adjustments from [redacted] s [redacted] Year

As Code section 6229(f) does not apply to extend the period within which to assess tax attribute to adjustments to the taxable income reported on [redacted]'s [redacted] return, it is unnecessary to decide whether that return was filed in [redacted] (as reflected on the BMF MCC Transcript) or [redacted] (as indicated by the dates of the signatures on the return and the Brookhaven Service Center date stamp). The relevant period is the period provided by Code section 6501 for assessing tax due on the returns of [redacted]'s shareholders. See Bufferd v. Commissioner, 506 U.S. 523, 533 (1993)(holding that for a non-TEFRA year of an S corporation the limitations period within which the Service must assess the income tax liability of an S corporation shareholder runs from the date on which the shareholder's return is filed). That period depends on when the shareholders filed their returns, not when [redacted] filed its return. We understand that the examination division is in the process of controlling the statutes that apply to the shareholders' returns.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures that have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any questions, you should call Halvor Adams at (516)688-1737.

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By: ______________________________
JODY TANCER
Associate Area Counsel